

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

SHAUN MICHAEL LINKO,

Movant,

v.

CIVIL ACTION NO. 2:16-cv-01478
(Criminal No. 6:13-cr-00037)

UNITED STATES OF AMERICA,

Respondent.

MEMORANDUM OPINION AND ORDER

Pending before the Court is Movant's letter-form Motion to Withdraw, (ECF No. 57). On May 7, 2015, Movant submitted a letter-form motion seeking modification of his criminal sentence (the "Motion"). *United States v. Linko*, Criminal Action No. 6:13-cr-00037 (S.D. W. Va. Nov. 19, 2013), ECF No. 51. On February 11, 2016, United States Magistrate Judge Omar J. Aboulhosn issued an Order and Notice construing the Motion as a Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody and ordering Movant to give notice of objection to having his Motion so construed within 30 days. *Id.*, ECF No. 56. On February 18, 2016, Movant filed a letter-form motion to "withdraw any motions, or other open files I have in federal court." (ECF No. 57.) On February 19, 2016 this action was referred to Magistrate Judge Aboulhosn for submission of proposed findings and a recommendation ("PF&R"). (ECF No. 58.) Magistrate Judge Aboulhosn filed his PF&R, (ECF No. 59), on February 23, 2016, recommending that this Court grant Movant's motion to withdraw motions and dismiss the present action.

The Court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of de novo review and a party's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). In addition, this Court need not conduct a de novo review when party "makes general and conclusory objections that do not direct the Court to a specific error in the magistrate's proposed findings and recommendations." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982).

Objections to the PF&R in this case were due on March 11, 2016. To date, no objections have been filed.

Accordingly, the Court **ADOPTS** the PF&R, (ECF No. 59), **GRANTS** Movant's letter-form motion to withdraw, (ECF No. 57), and **DISMISSES WITHOUT PREJUDICE** the present action.¹ The Clerk is **DIRECTED** to remove this action from the Court's docket.

IT IS SO ORDERED.

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: April 22, 2016



THOMAS E. JOHNSTON
UNITED STATES DISTRICT JUDGE

¹ Because Movant timely withdrew his motion in response to the Magistrate Judge's Order and Notice, that motion will not be considered a § 2255 motion or counted against Movant for purposes of applying restrictions on "second or successive" habeas corpus applications under 28 U.S.C. § 2244(b). *See Castro v. United States*, 540 U.S. 375 (2003).